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BILL ANALYSIS



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Senate Bill 571 (as passed by the Senate)
Sponsor: Senator Mike Kowall
Committee: Elections and Government Reform

Date Completed: 11-5-15

CONTENT

The bill would amend provisions of the Michigan Campaign Finance Act concerning contributions to separate segregated funds, to do the following:

- **Allow contributions to be collected by or made payable first to the connected organization that established the fund for subsequent transmission to the fund.**
- **Specify that such contributions would not be considered to be commingled with other funds of the connected organization if various conditions were met.**
- **Delete a requirement that an individual affirmatively consent at least once every year to contributing to a separate segregated fund on an automatic basis.**

The bill also would define "commingled".

The Act allows a for-profit or nonprofit corporation, a joint stock company, a domestic dependent sovereign, or a labor organization formed under the laws of this or another state or a foreign country to make an expenditure for the establishment and administration of, and solicitation of contributions to, a separate segregated fund to be used for political purposes. A separate segregated fund is limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, independent committees, and other separate segregated funds.

The bill would use the term "connected organization" to refer to the entities that may form a separate segregated fund.

The Act prohibits contributions received by a committee from being commingled with other funds of an agent of the committee or of any other person. ("Committee" means a person who receives contributions or makes expenditures for the purpose of influencing the action of voters for or against the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party, if contributions received or expenditures made total \$500 or more in a calendar year.)

The bill provides that contributions to a separate segregated fund could be collected by or made payable first to the connected organization that established the fund, or its member or agent, for subsequent transmission to the separate segregated fund. Those contributions would not be considered to be commingled with other funds of the connected organization or its member or agent, even if deposited first into general treasury funds, if all of the four conditions described below were met.

First, the individual making the contribution would have to do either of the following:

- Specifically indicate in a record or electronic record that the total amount, or a specified portion of the total amount if remitted as part of a dues or other payment to the connected organization or its member or agent, was a contribution to the separate segregated fund.
- Remit a written instrument for payment to the connected organization or its member or agent in response to a specifically requested amount that included a solicited contribution, if the solicitation were clearly distinguishable from any dues or other fees requested as part of the total, and the connected organization or its member or agent maintained a record or electronic record of the solicitation that included the amount solicited and the amount of any dues or other fees charged in conjunction with the solicitation for each contribution.

Second, the connected organization or its member or agent would have to transmit the entire specified amount of the contribution, individually or aggregated with other lawful contributions, to the separate segregated fund electronically or by written instrument.

Third, all transmissions of contributions to the separate segregated fund by the connected organization or its member or agent would have to be accompanied by or logically associated with a record or electronic record setting forth all information required under Section 26 of the Act for each individual contributor whose contribution was transmitted. (Section 26 describes information that a campaign statement of a committee must contain.)

Fourth, the connected organization or its member or agent that received contributions for transmission to the separate segregated fund would have to internally account for the contributions in a manner that distinguished them from general treasury funds, and document the identity of the individual contributor, the method of receipt for each contribution, and the date and amount of all individual contributions and all transmissions to the separate segregated fund.

(As used in these provisions, "record" and "electronic record" would mean those terms as defined in the Uniform Electronic Transactions Act.)

The bill specifies that any cost attributable to an activity described above incurred by the connected organization or its member or agent would be considered an expenditure for the administration of a separate segregated fund by the connected organization allowed under the Act.

The bill would define "commingled" as blended together so that funds of a committee or separate segregated fund are mixed with funds that are prohibited for uses under the Campaign Finance Act. The term would not include a contribution received by a person for transmission to a separate segregated fund (as described above). The term also would not include a contribution to a committee by one or more individuals through a person if all of the following were met:

- The individual or aggregated contribution was accompanied by or logically associated with all information required under Section 26 of the Act for each individual contributor.
- The individual making the contribution was its original source.
- The contribution was not obtained through use of coercion or physical force, as a condition of employment or membership, or through the use or threat of job discrimination or financial reprisals.
- Only the individual making the contribution exercised any control over it.

The Act allows contributions to a separate segregated fund to be solicited from specific categories of people or their spouses, depending on whether the fund is established by a for-profit corporation, a joint stock company, a nonprofit corporation, a labor organization, or a domestic dependent sovereign. Contributions may be solicited or obtained from a specified individual on an automatic basis, including a payroll deduction plan, only if the individual who is contributing to the fund affirmatively consents to the contribution at least once in every

calendar year. The bill would retain the requirement that the individual affirmatively consent, but would delete the requirement that he or she do so each year.

The Act contains a number of regulations and prohibitions related to expenditures, and defines "expenditure" as a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or opposition to, the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party. The term does not include an expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund if that expenditure was made by the person who established the fund. The bill also would exclude an expenditure made by a person who was a member of a nonprofit corporation that established the fund.

MCL 169.203 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. The bill would provide a process to ensure that contributions to a separate segregated fund were not considered commingled, and would add a definition of "commingled" to the Act. A person who violates the current prohibition against commingling is subject to a maximum civil fine of \$1,000. A person who knowingly violates Section 55 of the Act, which governs separate segregated funds, is guilty of a felony. If the violator is an individual, the penalty is imprisonment for up to three years and/or a maximum fine of \$5,000. If the violator is not an individual, the penalty is a maximum fine of \$10,000. It is not known whether the proposed changes would increase or decrease felony dispositions under the Act, which have not occurred since at least 1999.

An increase in felony prosecutions and convictions could increase resource demands on local court systems, law enforcement, and jails or prisons. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. In the long term, if the increased intake of prisoners increased the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government would be approximately \$34,550 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Conversely, to the extent that the bill prevented felony prosecutions and convictions, costs would be avoided.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.